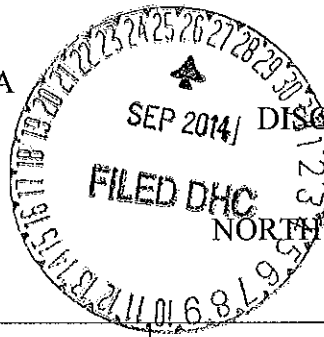


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 31

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

JAMES W. THOMPSON III, Attorney,

Defendant.

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, James W. Thompson III, was admitted to the North Carolina State Bar on August 19, 1973, and was at all times referred to herein an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Morehead City, Carteret County, North Carolina.

FIRST CLAIM FOR RELIEF

4. Paragraphs 1-3 are re-alleged and incorporated as if fully set forth herein.

5. In January 2006, Defendant's client, M.S., drew a check for \$250,000 made payable to Defendant and another individual, J.H., as escrow agent. This check represented M.S.'s payment of earnest money towards the purchase of real property.

6. This \$250,000 check, which was not certified, was held by J.H. and not immediately deposited into any bank account.

7. On or about April 11, 2006, Defendant presented the \$250,000 check to his bank, RBC Centura, accompanied by two deposit slips – one for the deposit of \$125,000 into his real estate trust account with RBC Centura ending in 5168 (RETA 5168) and one for the deposit of \$125,000 into RBC Centura ending in 1787 (RBC 1787), M.S.'s escrow account for which Defendant was trustee.

8. RBC Centura credited \$125,000 to RETA 5168 and \$125,000 to RBC 1787.

9. The \$250,000 check described in paragraphs 5-7 was dishonored by the issuing bank for insufficient funds and on or about April 14, 2006, RBC Centura charged the full amount of the check (\$250,000) to RETA 5168.

10. As a result of the \$250,000 deduction, other clients' funds held in RETA 5168 were used to cover the deficit in RETA 5168.

11. Because Defendant was not performing monthly and quarterly reconciliations of his trust account, he did not know of the shortfall in his trust account caused in part by M.S.'s dishonored check until 2008.

12. In connection with his representation of G.H., a real estate developer, from 2006 through 2008, Defendant escrowed funds from lot sales for the completion of roads in a subdivision.

13. G.H.'s escrowed funds were deposited into RETA 5168 and Defendant periodically made authorized disbursements on behalf of G.H.

14. In 2008, Defendant informed G.H. that there was a shortfall in his trust account and that he no longer had G.H.'s funds in his trust account.

15. Defendant had not maintained a client ledger for G.H. to show the receipts and reimbursements made on G.H.'s behalf and the current balance of G.H.'s funds held in the trust account.

16. Defendant and G.H. determined that Defendant should have \$117,950 in trust for G.H.

17. In a letter to G.H. dated January 21, 2009, Defendant acknowledged that he owed G.H. approximately \$117,900.

18. In late February 2010, G.H. contacted the State Bar seeking information about the Client Security Fund in an attempt to recover the money Defendant owed him.

19. Defendant had not previously notified the State Bar that the monies that were to have been held in trust for G.H. had been misapplied.

20. After G.H. contacted the State Bar, Defendant reimbursed G.H. \$117,950 from his personal funds.

21. In late 2005 and 2006, Defendant authorized his daughter to use his general trust account, RBC Centura ending in 5301, to make deposits and numerous withdrawals for personal needs.

22. Defendant's daughter's funds in Defendant's trust account were not held in the trust account in connection with Defendant's performance of legal services.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By failing to promptly remedy the deficit in his real estate trust account caused by M.S.'s \$250,000 check being dishonored, Defendant failed to safeguard entrusted funds in violation of Rule 1.15-2(a) and used entrusted funds for the benefit of persons other than the beneficial owners of the property in violation of Rule 1.15-2(j);
- (b) By failing to deliver to G.H. entrusted funds Defendant had received in escrow for G.H., Defendant failed to pay or deliver to the client entrusted property belonging to the client and to which the client was entitled in violation of Rule 1.15-2 (m);
- (c) By failing to maintain a client ledger for G.H. and by failing to perform monthly and quarterly reconciliations of his trust account, Defendant failed to adequately monitor and maintain his attorney trust account in violation of Rules 1.15-3(b)(5), 1.15-3(d)(1), and 1.15-3(d)(2);
- (d) By failing to inform the State Bar that the funds he was to have been holding in escrow for G.H. had been misapplied, Defendant violated Rule 1.15-2(o); and
- (e) By allowing his daughter to make deposits into and withdrawals from his general trust account for personal needs, Defendant failed to administer his general trust account in accordance with the Rules of Professional Conduct in violation of Rules 1.15-2(a) and Rules 1.15-2(b).

SECOND CLAIM FOR RELIEF

23. Paragraphs 1 - 22 are re-alleged and incorporated as if fully set forth herein.

24. In 2005, Defendant began performing legal work on the Cannonsgate development in Carteret County on behalf of developer R.A. North and was the closing attorney for hundreds of closings on undeveloped lots for that development throughout 2006.

25. Defendant was also the closing attorney for the sales of hundreds of undeveloped lots in the Summerhouse development in Onslow County from approximately December 2006 to January 2008.

26. Most of the Cannonsgate and Summerhouse closings for which Defendant was the closing attorney were conducted by mail.

27. Defendant relied heavily on his nonlawyer assistants, P.B. and S.D. (Staff) to process most of these closings including preparing documents and writing the checks for the closings.

28. Defendant did not review the HUD-1 Settlement Statements in all of the Cannonsgate and Summerhouse closings his office handled.

29. Numerous irregularities of which Defendant was unaware occurred during these closings, to include:

- a) In two of the Cannonsgate closings, Staff disbursed funds from the closings prior to receiving the loan proceeds from the lender resulting in a shortfall in the trust account of approximately \$190,000 causing other clients' funds to be used to cover the shortfall;
- b) In at least fifteen closings, Staff failed to collect earnest money deposits from the buyers resulting in additional trust account shortfalls;
- c) In the closings for the sales by Coastal Realty Group, LLC of Lots 487 and 855 in Summerhouse, according to the sales contracts, the buyers were required to deposit earnest money with the Seller in the amounts of \$27,500 and \$36,900 respectively. However, the HUD-1 Settlement Statements for the sale of these lots reflected a landscaping credit in the amount of the purported earnest money deposit in addition to containing an entry showing earnest money deposit retained by seller in that amount which Defendant would have questioned had he properly reviewed the settlement statements;
- d) In at least one of the Summerhouse closings, including the closing for the sale by Coastal Realty Group, LLC of Lot 49, the HUD-1 Settlement

Statements reflected unreasonable closing costs for which Defendant had no explanation and which he would have questioned had he properly reviewed the settlement statements; and

- e) In several of the Summerhouse closings, including the closings for the sale by Coastal Realty Group, LLC of Lots 49, 70, 487, and 855, amounts shown on line 603 of the HUD-1 Settlement Statements as cash to seller did not accurately reflect the disbursements to the seller shown on Defendant's ledgers.

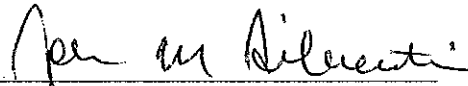
THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By delegating the processing of real estate closings and the handling of funds for the closings in a manner and to such a degree that he was unaware that: i) disbursements were made in two closings prior to the receipt of loan proceeds; ii) earnest money deposits in numerous closings were not collected; iii) some HUD-1 Settlement Statements failed to show the earnest money deposits required by the sales contracts and instead reflected large landscaping credits in the amount of the earnest money deposits; iv) some HUD-1 Settlement Statements reflected unreasonable closing costs for which Defendant had no explanation; and, (v) in some closings, HUD-1 Settlement Statements did not accurately reflect the amount of cash paid to the seller, Defendant failed to act with reasonable diligence in representing his clients' interests in violation of Rule 1.3, failed to supervise his non-lawyer assistants to the extent necessary to ensure that the nonlawyer assistants' conduct was compatible with his professional obligations in violation of Rule 5.3(b), failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a), and used entrusted funds for the benefit of persons other than the beneficial owners of the property in violation of Rule 1.15-2(j).

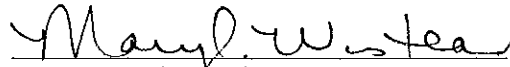
WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the costs and administrative fees permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

This the 26th day of September, 2014.



John M. Silverstein, Chair
Grievance Committee



Mary D. Winstead
Deputy Counsel
State Bar No. 9778
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
919-828-4620

Attorney for Plaintiff